

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION

OIL CONSERVATION DIVISION
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IN THE MATTER OF THE APPLICATION
OF McELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO

CASE NO. 12635

APPLICATION FOR HEARING DE NOVO

D. J. Simmons, Inc., a party of record adversely affected by the decision of the New Mexico Oil Conservation Division in Case No. 12635, (Order No. R-11663), hereby applies for a hearing De Novo before the New Mexico Oil Conservation Commission pursuant to NMSA Section 70-2-13 (1987 Repl.).

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By

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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 3rd day of October, 2001, as follows:

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J. Scott Hall

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**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:**

*See Also Orders No. R-11663-A
R-11663-B
R-11663-C*

**CASE NO. 12635
ORDER NO. R-11663**

**APPLICATION OF McELVAIN OIL & GAS PROPERTIES, INC. FOR
COMPULSORY POOLING, RIO ARRIBA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on May 17, 2001, at Santa Fe, New Mexico before Examiner Michael E. Stogner.

NOW, on this 24th day of September, 2001, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain"), seeks an order pooling all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the S/2 of Section 25, Township 25 North, Range 3 West, NMPM, Rio Arriba County, New Mexico, to form a standard 320-acre lay-down gas spacing and proration unit ("unit") for any pool developed on 320-acre spacing within that vertical extent, which presently includes only the Undesignated Blanco-Mesaverde Pool.

(3) The applicant proposes to re-enter its plugged and abandoned Wynona Well No. 1 (API No. 30-039-24222) (the "subject well"), which is to be redesignated the Naomi Well No. 1, and is located at an unorthodox gas well location (approved by Division Administrative Order NSL-4538, dated December 29, 2000) 1650 feet from the South line and 450 feet from the West line (Unit L) of Section 25.

(4) Division records indicate that the subject well was originally drilled in 1988 by McElvain to a depth of 8,113 feet and completed in the West Lindrith Gallup-Dakota Oil

Pool at a standard oil well location within a standard 160-acre oil spacing and proration unit for this oil pool comprising the SW/4 of Section 25.

(5) It is McElvain's intent to re-enter this well by removing the dry hole marker, drilling out six cement plugs, and completing it in the Mesaverde formation at an approximate depth of 5,970 feet as an initial gas well within the proposed 320-acre unit.

(6) Two or more separately owned tracts are embraced within this unit, and/or there are owners of royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the unit which are separately owned.

(7) Applicant is an owner of an oil and gas working interest within the unit and therefore has the right to develop this acreage and recover gas underlying the same.

(8) There are interest owners in the proposed unit that have not agreed to pool their interests.

(9) D. J. Simmons, Inc., which owns 100% of the working interest that comprises a portion of a Federal lease (U. S. Government Lease No. NM-10589) consisting of 80 acres, being the N/2 SE/4 of Section 25, or 25% of the proposed 320-acre unit, appeared at the hearing in opposition to McElvain's application and presented evidence to support its position.

(10) However, the cumulative evidence presented in this matter serves to support McElvain's position; therefore, in order to avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within this 320-acre unit.

(11) Applicant should be designated the operator of the Naomi Well No. 1 and of the proposed 320-acre unit.

(12) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted working interest owners" are owners of working interests in the unit, including unleased mineral interests, who are not parties to an operating agreement governing the unit.) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs of the proposed well to the operator in lieu of paying its share of reasonable well costs out of production.

(13) The applicant requested that a risk penalty of 200 percent be assessed against all uncommitted mineral interest owners.

(14) Inasmuch as the subject well has already been drilled, the remaining risk should apply only to re-entry and recompletion operations to be conducted on the well. Further, based on precedent established in a number of other previous compulsory pooling cases involving the re-entry of existing wellbores, the risk penalty should be reduced to 100 percent.

(15) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 100 percent thereof as a reasonable charge for the risk involved in re-entry and recompletion operations.

(16) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs, but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(17) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid, estimated well costs exceed reasonable well costs.

(18) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,455.67 per month while re-entering and \$545.55 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(19) Except as noted in Finding Paragraphs No. (15) and (18) above, all proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(20) If the operator fails to commence re-entry and recompletion operations on the well to which the unit is dedicated on or before December 31, 2001, or if all the parties to this forced pooling reach voluntary agreement subsequent to the entry of this order, this order should become of no effect.

(21) The operator may request from the Division Director an extension of the December 31, 2001 deadline for good cause.

(22) The operator should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc. ("McElvain"), all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the S/2 of Section 25, Township 25 North, Range 3 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled to form a standard 320-acre lay-down gas spacing and proration unit ("unit") for any pool developed on 320-acre spacing within that vertical extent, which presently includes only the Undesignated Blanco-Mesaverde Pool.

(2) This unit shall be dedicated to the previously plugged and abandoned Wynona Well No. 1 (API No. 30-039-24222) (the "subject well"), which is to be redesignated the Naomi Well No. 1 and is located at an unorthodox gas well location (approved by Division Administrative Order NSL-4538, issued December 29, 2000) 1650 feet from the South line and 450 feet from the West line (Unit L) of Section 25.

(3) The operator of the 320-acre unit shall commence re-entry and recompletion operations on the aforementioned well on or before December 31, 2001, and shall thereafter continue the re-entry and recompletion operations on the well with due diligence in order to test the Mesaverde formation.

(4) In the event the operator does not commence re-entry and recompletion on the proposed well on or before December 31, 2001, Ordering Paragraph No. (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) McElvain is hereby designated the operator of the subject well and unit.

(6) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. After the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the unit an itemized schedule of estimated costs of the re-entry and recompletion operations ("the well costs").

(7) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(8) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and
- (b) as a charge for the risk involved in re-entering and recompleting the well, 100% of the above costs.

(11) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(12) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,455.67 per month while re-entering and recompleting and \$545.55 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3.

of the COPAS form titled "*Accounting Procedure-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(13) Except as provided in Ordering Paragraphs No. (10) and (12) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(14) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(16) The operator of the well and unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(17) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director